

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CSX TRANSPORTATION, INC.  
500 Water Street  
Jacksonville, FL 32202-4423

Plaintiff

v.

PORT ERIE PLASTICS, INC.  
909 Troupe Road  
Harborcreek, PA 16421

Defendant.

CIVIL ACTION

CASE NO 05-139 Erie

**FIRST AMENDED COMPLAINT**

**Parties**

1. Plaintiff CSX Transportation, Inc. (hereinafter "CSX") is a corporation organized under the laws of the State of Virginia with its principal place of business in Jacksonville, Florida.

2. Defendant Port Erie Plastics, Inc., upon information and belief, is a corporation organized under the laws of the State of Pennsylvania with its principal place of business in Erie, Pennsylvania

**Jurisdiction and Venue**

3. The subject matter of this action arises from rail car demurrage charges assessed pursuant to the provisions of 49 U.S.C. § 10746 and rules promulgated thereunder relating to rail car use and distribution. This Court, therefore, has jurisdiction pursuant to 28 U.S.C. § 1337 as a cause of action arising under the Interstate Commerce Act, 49 U.S.C. § 10101 et. seq.

4. Venue lies in this judicial district by virtue of 28 U.S.C. § 1391(b) in that a substantial part of the events or omissions giving rise to this claim occurred in this judicial district.

**CLAIM**

5. Between May of 2002 and October of 2003, defendant incurred \$127,116 00 in demurrage charges pursuant to the terms of CSX's tariff, all of said charges due and owing to CSX

6. CSX' demurrage tariff is applicable to defendant because of defendant's status as consignee of the freight at issue.

7. A full compilation of all charges has been prepared by invoice and submitted to defendant

8. The assessed demurrage charges were determined and made applicable pursuant to the rules and rates promulgated and published in accordance with 49 U.S.C. § 10746

9. Despite repeated demand, defendant has failed and refused to make any payments for the demurrage charges incurred.

**WHEREFORE**, plaintiff CSX Transportation, Inc. respectfully demands that judgment be entered in its favor and against defendant Port Erie Plastics, Inc., in the amount of \$127,116.00, together with costs, prejudgment interest, and such other relief as the Court may allow.

s/ Charles L. Howard  
Paul D. Keenan  
Charles L. Howard  
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Attorneys for Plaintiff  
CSX Transportation, Inc.

Dated: August 29, 2005

**CERTIFICATE OF SERVICE**

I, Charles L. Howard, hereby certify that on August 29, 2005, I caused a true and correct copy of the foregoing First Amended Complaint to be filed with the Court electronically and to be served by U.S. mail upon the following counsel of record:

Richard J. Parks, Esquire  
MacDonald, Illig, Jones & Britton LLP  
100 State Street, Suite 700  
Erie, Pennsylvania 16507-1459

/s Charles L. Howard  
Charles L. Howard  
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